

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

MB REOIA LLC, Appellant, v. City of Davenport Board of Review, Appellee.	ORDER Docket Nos. 13-103-0951 to 0953 Parcel Nos. X0207-01G X0207-01J X0207-01M
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On January 30, 2014, the above-captioned appeal came on for consideration before the Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2) and Iowa Administrative Code rules 701-71.21(1) et al. Appellant MB REOIA LLC is represented by James R. DePasquale of DePasquale, Kelly & Company, Irvine, California. MB REOIA LLC requested its appeal proceed without a hearing. Assistant City Attorney Chris Jackson represented the Board of Review. The Appeal Board, having reviewed the record and being fully advised, finds:

Findings of Fact

MB REOIA LLC is the owner of three commercially classified properties known as Steeplegate Plaza Condominiums located at 101-103, 105-107, and 109-111 W 76th Street, Davenport, IA. MB REOIA purchased the properties on February 26, 2013, for \$634,800 via Sheriff's Deed as the result of a foreclosure. (Exhibit 4).

According to the property record cards and an appraisal in the record, the three subject properties are office condominium units that comprise one building built in 1989. The total gross building area (GBA) is 15,120 square feet and 15,000 square feet of net rentable area. This is divided equally between each unit, which has 5040 square feet of GBA and 5000 square feet of net rentable area. The site is irregularly shaped and each parcel has been allocated 25,167 square feet of site area.

The total site size of the three combined parcels is 1.733 acres. The following chart summarizes the location of each parcel within the building (location of unit) and the net rentable square feet for each unit. Two tenants split the net rentable area of Parcel X0207-01J.

Parcel	Unit #	Location of Unit	Rentable Area
X0207-01G	101-103	East Side	5000
X0207-01J	105	Middle	2500
X0207-01J	107	Middle	2500
X0207-01M	109-111	West Side	5000

MB REOIA protested to the Board of Review regarding the 2013 assessment on each property of \$336,700, allocated as \$30,000 in land value and \$306,700 in building value. The total assessment for all three parcels is \$1,010,100. It claimed the properties were assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a) (2). The Board of Review denied the petition.

MB REOIA then appealed to this Board reasserting its claim. It asserts the correct fair market value of the three properties is \$500,000, or \$166,666 per parcel. It provides no explanation how it arrived at a \$500,000 valuation for the properties and ultimately the only evidence of the properties' value is the February 2013 sales price and an appraisal.

MB REOIA submitted an appraisal in support of its claim. The appraisal was completed by Jared G. Jackson of HILCO Real Estate Appraisal, LLC, Northbrook, Illinois. The appraisal, completed for financing purposes, determines the market value of the property's *leased fee* estate at \$830,000 as of June 22, 2012. We are hesitant to rely on a leased fee analysis, as assessed value is to be based on the property's fee simple market value.

Jackson chose not to complete the cost approach for the subject property. He noted the cost approach is a reliable method for newer construction and special use properties, but the subject improvements are 23-years old with an effective age of 20 years.

Jackson completed the sales approach using four sales of commercial properties in the Quad-Cities area. Two sales were located in Davenport, while the other two sales were located in Rock Island and Moline, Illinois. Jackson did not make quantitative adjustments to the comparable properties for differences, but rather provided a qualitative analysis and rated the properties as superior or inferior to the subject property in different characteristics such as location, size, finished areas, age, and quality. The unadjusted price per-square-foot of the comparable properties ranged from \$46.53 to \$61.48. Jackson expects the value of the subject to be greater than comparables #1 and #2, or \$50.00 per-square-foot; similar to comparable #3, or \$56.43 per-square-foot; but less than comparable #4, or \$61.48 per-square-foot. He concludes an opinion of \$55.00 per-square-foot. Ultimately, we find Jackson relied on unadjusted sale prices. While it is possible that comparable properties do not need any adjustments, we find that is unlikely in this case. For example, Comparable #2 has only 16.1% finished area compared to the subject, with 93% finished area. Additionally, two sales (Comparables #1 and #4) have roughly half the net rentable area compared to the subject. Despite these apparent significant differences, he applied no quantitative adjustments. Additionally, we note Comparable #4 was an auction sale with an estimated sales price. While the sale price of a property sold at auction may reflect market value, it may not be as useful as a non-auction sale.

Jackson also relied on the income approach to value. He relies on five comparable leases to determine market rents. The leases range from \$5.85 to \$10.00 per-net-rentable area. All of the rents are list rents. The subject's actual rents range from \$6.50 to \$7.00 per-net-rentable area and Jackson determined a weighted average of \$6.81 per-net-rentable area. He does not explain how he weighted the subject units. He asserts the subject's average rent of \$6.81 per-net-rentable area is within the listed comparable rents, and therefore, the subject's actual rents are market rents. We disagree. The lease that sets the low end of Jackson's range at \$5.85 per-net-rentable area is "advertised as flex warehouse/office space with 14' clearance in warehouse areas." This property's use appears to be

dissimilar from the subject and we question whether this property is actually comparable. Excluding this property, the four remaining leases have rents between \$7.00 and \$10.00 per-net-rentable areas with an average \$8.31 per-net-rentable area. Even including all five of Jackson's comparable leases, the average is \$7.82 per-net-rentable area, which is still roughly \$1.00 higher than the subject's average rents that he determined to be market rent.

Jackson uses the weighted actual rent of the subject property in calculating the net operating income (NOI). Further, he included real estate taxes in his operating expenses. Jackson concludes a NOI for the subject properties of \$87,479. He also determined a direct capitalization rate of 10.50%, which results in a value opinion of \$830,000 rounded, by the income approach. Because we do not believe the actual rents are reflective of market rents and because the tax burden was deducted as an expense, we give this analysis no consideration.

The Board of Review provided several exhibits including a sales history of the subject property, aerial photographs, a footprint of the subject building, assessor's notes and an allocation of the value. While these reference items provide background and description of the subject property, we find it offers no relevance in establishing the market value of the subject property.

Conclusion of Law

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A. This Board is an agency and the provisions of the Administrative Procedure Act apply. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review, but considers only those grounds presented to or considered by the Board of Review. §§ 441.37A(3)(a); 441.37A(1)(b). New or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption the assessed value is correct.

§ 441.37A(3)(a). However, the taxpayer has the burden of proof. § 441.21(3). This burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Richards v. Hardin Cnty. Bd. of Review*, 393 N.W.2d 148, 151 (Iowa 1986).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. § 441.21(1)(b). Market value essentially is defined as the value established in an arm's-length sale of the property. *Id.* Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. § 441.21(1)(b). If sales are not available to determine market value then "other factors," such as income and/or cost, may be considered. § 441.21(2). The property's assessed value shall be one hundred percent of its actual value. § 441.21(1)(a).

In an appeal alleging the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(2), the taxpayer must show: 1) the assessment is excessive and 2) the subject property's correct value. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995).

MB REOIA, LLC submitted an appraisal that determines the leased fee value of the subject property. In Iowa, however, property is assessed based on its fee simple interest. Iowa Courts have conclusively held "the proper measure of the value of property is what the property would bring if sold in *fee simple*, free and clear of any leases." *I.C.M. Realty v. Woodward*, 433 N.W.2d 760, 762 (Iowa Ct. App. 1988) (emphasis added); *Merle Hay Mall v. City of Des Moines Board of Review*, 564 N.W.2d 419 (Iowa 1997); *Oberstein v. Adair Cnty. Board of Review*, 318 N.W.2d 817 (Iowa Ct. App. 1982). Additionally, the IOWA REAL PROPERTY APPRAISAL MANUAL, published by the Iowa Department of Revenue, clearly states, "Iowa is a fee simple state." MANUAL p. 1-3.

In addition, the appraisal values the property as a whole and not the individual parcels as required by Iowa Code sections 499B.11(1). Section 499B.11(1) states that “All real property taxes . . . shall be assessed and levied on each apartment . . . and not on the entire property regime.” The units of a horizontal property regime, like the subject, are completely and freely alienable and are separate parcels of real property. § 499B.10. As a result, Iowa law requires that the three parcels be valued separately. *Dinkla v. Guthrie Cnty. Bd. of Review*, 2006 WL 2422170 (Iowa App. Ct. Aug. 23, 2006).

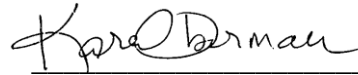
Further, we find flaws with the appraisal. While the sales comparison approach was developed, and this is the preferred valuation method by Iowa Code section 441.21, the appraiser used unadjusted sales prices as the basis for his conclusions even though he acknowledged differences existed between the comparable properties and the subject. Further, we do not agree with the appraiser’s conclusions that the subject’s actual rents are the market rents in the income approach. Additionally, he reduced the net operating income by the amount of the 2010 actual taxes and determined a direct capitalization rate. Because this valuation is for tax assessment appeal, taxes would not be considered an expense and a loaded capitalization rate is typically used.

The only remaining evidence of the property’s value is the February 2013 sales price. The record reflects the sale was a sheriff’s sale due to foreclosure. Under Iowa Code section 441.21(1)(b), sale prices of properties in abnormal transactions not reflecting market value must not be taken into account, or must be adjusted to eliminate the effect of factors which distort market value, including foreclosure or other forced sales. The subject’s sale price was not adjusted to account for the distorting nature of the foreclosure sale. Therefore, we give the sales price no consideration.

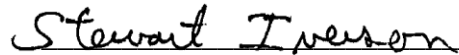
In conclusion, we find MB REOIA LLC failed to establish the fee simple fair market value of the individual subject parcels as of January 1, 2013. As a result, it has not shown the subject properties are over-assessed.

THE APPEAL BOARD ORDERS the January 1, 2013, assessment of the properties located at 101-103, 105-107, and 109-111 W 76th Street, Davenport, Iowa, is affirmed

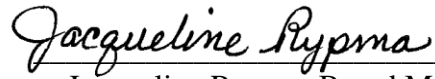
Dated this 26th day of February, 2014.



Karen Oberman, Presiding Officer



Stewart Iverson, Board Chair



Jacqueline Rypma, Board Member

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